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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,501	11/02/2000	Oleg Rashkovskiy	ITL.0778US (P10142)	8091
21906 7590 12/24/2008 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			EXAMINER SHERKAT, AREZOO	
			ART UNIT 2431	PAPER NUMBER
			MAIL DATE 12/24/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* OLEG RASHKOVSKIY  
and ERIC C. HANNAH

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Application 09/706,501  
Technology Center 2400

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Mailed: December 23, 2008

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Before KRISTA ZELE, *Deputy Chief Appeals Administrator*.  
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on October 9, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

Appellants have not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record in the Final Rejection, dated April 11, 2007, finds that rejections are outstanding for the following pending claims: Claims 1, 2-9, 21-28, 79, and 91 are rejected under 35 U.S.C. 102(b) as being anticipated by Candelore et al. (U.S. Patent No. 6,061,449 and Candelore hereinafter); Claims 2-20, 80-81, and 92-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candelore et al., (U.S. Patent No. 6,061,449 and Candelore hereinafter), in view of Etzel et al., (U.S. Patent No. 6,577,734 and Etzel hereinafter). The rejected claims that have not been appealed and/or argued for appeal are claims 1-8, 10-28, 79-81 and 91-96.

### **DISCUSSION**

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8<sup>th</sup> ed. Rev. 6, Sept 2007).

Additionally, claim 9, the claim that the Appellants have presented on appeal, is dependent on claim 1, and must be rewritten and presented in independent form in order to place the claim in reviewable standing before the Board.

**CONCLUSION**

Accordingly, it is **ORDERED** that the application is returned to the Examiner to enter a paper:

- 1) canceling claims 1-8, 10-28, 79-81 and 91-96;
- 2) instructing the Appellants to place the remaining claim 9 in independent form;
- 3) upon entry of the paper, to return the application to the Board for the consideration of appealed claim; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/ljs

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